IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 130 of 2004

Date of decision 12.6.2007

Tek Chand **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge.
The Hon'ble Mr. Justice : Kuldip Singh, Judge.

Whether approved for reporting? No

For the appellant : Mr. M.S. Guleria, Advocate.

For the respondent : Mr. Som Dutt Vasudeva, Addl. A.G. with Mr. D.S. Nainta, Dy. A.G.

Surjit Singh, Judge (Oral)

Appellant has been convicted of an offence under Section 20 of the Narcotic Drugs & Psychotropic Substances Act and sentenced to undergo rigorous imprisonment for ten years and to pay fine of rupees one lakh; in default of payment of fine to undergo rigorous imprisonment for further period of four years, for allegedly being in exclusive and conscious possession of 500 grams of 'Charas'.

2. According to the prosecution on 5.1.2003 around 6.10 p.m. when HC Dhani Ram (PW-10) accompanied by Inder Singh (PW-4) and Constable Bodh Raj was present near English wine shop at Aut in

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[1] **Whether reporters of the local papers may be allowed to see the judgment?**

connection with the routine patrolling, the appellant was seen coming from the side of the public urinal. On seeing the police, the appellant became nervous, which aroused the suspicion of HC Dhani Ram (PW-10) and his companions. The appellant was over-powered. He was told that it was intended to search his person and he had the right to be searched in the presence of a Magistrate or a Gazetted Officer and in case he so desired, search in the presence of a Magistrate or Gazetted Officer could be arranged. However, the appellant, allegedly opted for being searched on the spot by HC Dhani Ram (PW-10). Thereafter search was conducted and one bag was recovered from the appellant. There were three packets in that bag and those packets contained 'Charas'. On weighment, the 'Charas' was found to be 500 grams. Two samples, each weighing 25 grams, were separated. The samples and the bulk 'Charas' were made up into three parcels and the parcels were sealed with a seal which produced the impression of letter 'T' of English alphabet. Case property was produced before the S.H.O. Police Station Aut, who affixed his own seal, which produced the impression of letter 'A' of English alphabet, on all the three parcels. Thus, the three parcels bore two type of seal impressions, one which read like letter 'A' of English alphabet and another which read letter like 'T' of the same alphabet. MHC Ram Lal (PW-8) sent one of the two samples to the Chemical Laboratory through constable Sarban Kumar (PW-7). The Chemical Examiner opined that the sample contained contents of 'Charas' as it was found to contain 31.26% resin.

3. Appellant was sent up for trial. The trial Court found him guilty and convicted and sentenced him as aforesaid.

4. Judgment of the trial Court has been assailed on various grounds by the learned counsel for the appellant. It is submitted that though according to the prosecution version there were three packets containing 'Charas', in the Court when the parcel containing bulk 'charas' was opened, four packets were found. Another submission made by the learned counsel for the appellant is that the weight of the stuff contained in the three parcels, which were deposited with the M.H.C. in-charge Malkhana, was apparently 725 grams, though the total weight of the recovered stuff was 500 grams only. He further submitted that as per evidence on record, i.e. the testimony of MHC Ram Lal (PW-8) and Sarban Kumar (PW-7), the sample was carried to the Chemical Laboratory and delivered at such laboratory on 6.1.2003, but according to the report Ext. PN of the Chemical Examiner, the sample was received on 7.1.2003.

5. We have considered the aforesaid submissions of the learned counsel for the appellant in the light of the evidence pertaining to the points covered by these submissions.

6. We are not convinced by the submission that there were four packets of 'Charas' in the parcel containing the bulk 'Charas' when it was opened in the Court. The Presiding Officer of the trial Court while recording the testimony of PW-3 Constable Bodh Raj, observed that there were in fact only three packets containing 'charas' and that some 'Charas' was lying loose inside the parcel. The three packets, as per observation of the trial Court, were untied. Under these circumstances, it can legitimately be presumed that some 'Charas' spilt from those untied packets and was found loose in the cover of the parcel.

7. Second submission is also without merit. It is true that in the Malkhana register, copy Ext. PL, weight of one parcel (parcel containing the bulk 'charas') is recorded to be 450 grams, weight of second parcel (one of the two sample parcels) is stated to be 250 grams and the weight of the third parcel is stated to be 25 grams, but the very fact that two parcels are stated to be sample parcels and there is overwhelming evidence in the form of the testimony of the Investigating Officer and the witnesses of the search and seizure that the weight of the two sample parcels was 25 grams each, there can be no hitch in jumping to the conclusion that weight of one of the two sample parcels has been wrongly recorded as '250 grams' in the Malkhana register. This is especially so when the digit '0' has been scored out in the Malkhana register. So the second submission is also rejected.

8. The third submission as such may not be sufficient to record the finding of acquittal but there is something more than what has been submitted by the learned counsel for the appellant. As a matter of fact the sample parcel was supposed to bear impressions of two different seals, one affixed by the Investigating Officer PW-10 Dhani Ram and another by PW-9 SI Dabe Ram. One impression was 'A' (of English alphabet) and another of 'T' of the same alphabet. However, according to the testimony of PW-8 Ram Lal, MHC and PW-7 Sarban Kumar, constable, the sample which was carried to the laboratory bore the impression of only one seal and the impression was of letter 'A' of English alphabet. That means the sample which MHC Ram Lal (PW-8) gave to PW-7 Sarban Kumar and which the latter carried to the Chemical Laboratory, does not stand connected with the stuff that was recovered from the appellant. If it is so, the report of the Chemical Examiner to the effect that the sample contained contents of

'Charas' does not stand connected with the stuff recovered from the appellant and consequently it cannot be said that the stuff which was recovered from the appellant was in fact 'Charas'.

9. For the foregoing reasons, appeal is accepted, judgment of the trial Court is set aside. The appellant is acquitted of the charge. He being in jail is ordered to be set at liberty forthwith in case his detention is not required in some other case.

(Surjit Singh)
Judge

June 12, 2007 (BC)

(Kuldip Singh)
Judge